

FREDRIC ALAN MAXWELL

IBLA 87-92

Decided November 14, 1988

Appeal from a decision of the Eastern States Office, Bureau of Land Management, rejecting oil and gas lease offer ES-36142.

Affirmed as modified.

1. Oil and Gas Leases: Description of Land--Oil and Gas Leases: Noncompetitive Leases--Oil and Gas Leases: Offers to Lease

An oil and gas lease offer for an unsurveyed island, which simply described a portion of a navigable lake which may have contained the island sought, did not comply with 43 CFR 3111.2-1(b), because the offer failed to describe the desired land by metes and bounds, giving courses and distances between the successive angle points on the boundary of the tract and tied to an official corner of the public land survey.

APPEARANCES: Fredric Alan Maxwell, pro se.

OPINION BY ADMINISTRATIVE JUDGE BURSKI

Fredric Alan Maxwell has appealed from a decision of the Eastern States Office, Bureau of Land Management (BLM), dated September 3, 1986, which rejected his over-the-counter oil and gas lease offer ES-36142. Appellant had filed the subject lease offer on April 30, 1986, for land which he characterized as an unsurveyed, though charted, island in Lake Superior, Michigan, named Stannard Rock. The area sought was described in his offer as a 2,000-foot square in Lake Superior, with sides aligned in cardinal directions and tied to a survey corner on land 54 miles to the south, aggregating approximately 91.827 acres. The offer also noted that "[i]f the surveyed land in Michigan was taken to its logical extension or extrapolation, this island would lie in T. 55 N., R. 22 W., Michigan Meridian, Michigan in Sections one (1) and twelve (12)."

On September 3, 1986, BLM rejected appellant's offer, stating:

By a memorandum dated August 8, 1986, the Milwaukee District Office has informed this office that according to records available in their Lands and Renewable Resources Division the lands requested in the lease offer, described as an island named

Stannard Rock are not public domain. The District has learned that Stannard Rock is a submerged shoal in water 30 to 40 feet deep lying about 40 miles offshore Marquette, MI in Lake Superior. An unmanned Coast Guard-maintained lighthouse sits on a man-made substructure built up from the shoal. The State of Michigan claims ownership of the lake bottom and State policy prohibits oil and gas leasing in the lake.

Maxwell thereupon took this appeal to the Board. 1/

In his statement of reasons, appellant argued that the land he sought was not part of the submerged shoal but was "an island, protruding from the water, on which a day beacon, not a lighthouse, is situated." He acknowledged that his offer "may have covered" more than the island he wanted and stated that he intended to delete the shoal and lighthouse area from his offer. He also forwarded copies of a map and deed dated December 14 and 16, 1875, obtained from the National Archives. The deed showed the conveyance, from the State of Michigan to the United States, of "a sub-marine site containing ten (10) acres, situated in the shoal northward of Stanard's Rock, and being intended for the erection of the proposed Light-House * * *." The accompanying map showed a lighthouse site in Lake Superior approximately 1,800 feet north of an area labeled "Day Beacon Stanard's Rock."

[1] An oil and gas lease offeror has the responsibility of furnishing a proper description of the land sought. Marilyn K. Crandall, 25 IBLA 180 (1976). The applicable regulation, 43 CFR 3111.2-1(b), requires that an over-the-counter oil and gas lease offer describe the desired land as follows:

If the lands have not been surveyed under the public land rectangular system, each offer shall describe the lands by metes and bounds, giving courses and distances between the successive angle points on the boundary of the tract, in cardinal directions except where the boundaries of the lands are in irregular form, and connected by courses and distances to an official corner of the public land surveys.

This, appellant did not do. Instead he described a 2,000-foot square of Lake Superior which may contain an island of unknown dimensions as well as part or all of a shoal on which a lighthouse was built.

An oil and gas lease offer is correctly rejected when it does not properly describe the land sought. Chalfant, Magee & Hansen, Inc., 13 IBLA 252 (1973). Even if we agree with appellant that BLM misidentified the island which he sought, BLM would have properly rejected appellant's offer

1/ On Nov. 19, 1986, this Board dismissed the appeal for failure to file a statement of reasons for the appeal. On Jan. 7, 1987, the Board granted appellant's petition for reconsideration and reinstated the instant appeal because he had established the requisite extraordinary circumstances required by the regulations. See 43 CFR 4.21(c).

for lack of an adequate description. Though it may have been difficult for a prospective lessee to provide a metes and bounds description of Stannard Rock, this difficulty did not preclude the applicability of the regulatory requirement. See Sam P. Jones, 45 IBLA 208, 212 (1980). Appellant was still required, under the applicable regulations, to provide a metes and bounds description of the island which he sought to lease.

In this regard, we note that, prior to 1983, a special regulation existed which contemplated the type of description which appellant utilized herein. Thus, 43 CFR 3101.1-4(c) (1982) provided that, for lease offers embracing unsurveyed public lands adjacent to tidal waters in southern Louisiana and in Alaska:

[i]f the offeror finds it impracticable to furnish a metes and bounds description as required in paragraph (b) of this section with respect to the water boundary, he may, at his option, extend the boundary of his offer into the water a distance sufficient to permit complete enclosure of the water boundary of his offer by a series of courses and distances in cardinal directions (the object being to eliminate the necessity of describing the meanders of the water boundary of the public lands included in the offer.)

This regulation further noted that while the lease would, itself, be limited to only the public lands embraced by the offer, the rental payment would be calculated on the basis of the total acreage included within the description.

Two observations must be made on this point. First, this regulation never applied to oil and gas lease offers in coastal Michigan. Second, this regulation was itself repealed in 1983, without any explanation other than a reference to the Department's desire to eliminate "counter productive and obsolete provisions." See 47 FR 28550 (June 30, 1982) (Proposed Regulations); 48 FR 33661 (July 22, 1983) (Final Regulations). It is possible that appellant thought that procedures which were, at one time, permissible in Louisiana and Alaska, were applicable in Michigan. This was not correct. Pursuant to the regulations, appellant was required to provide a metes and bounds description of the land sought. This he did not do. ^{2/}

Moreover, to the extent that appellant's offer, as described, included lands beneath Lake Superior not owned by the United States, it would properly be rejected. See E. McDonald, 68 IBLA 272, 275 (1982).

We note that Congress has recently adopted the Federal Onshore Oil and Gas Leasing Reform Act of 1987 (FOOGLRA), Title V of the Act of December 22,

^{2/} In our recent decision in Beard Oil Co., 103 IBLA 251 (1988), we held that while an oil and gas lease applicant was required to describe the lands for which a lease was sought, it was the responsibility of BLM, under Instruction Memorandum No. 88-167 (Dec. 23, 1987), to describe the lands that were available for leasing. In the instant case, however, appellant did not purport to actually describe Stannard Rock by a metes and bounds description, even though this clearly was the land which he sought to lease. Thus, the description which he supplied is necessarily deficient.

1987, 101 Stat. 1330-256. Section 5102 of FOOGLRA essentially abolished the noncompetitive oil and gas leasing system and mandated the implementation of a competitive leasing system. Only after a parcel has been posted for competitive sale under the new system and received no acceptable bids, may a parcel be leased noncompetitively. However, BLM may allow the informal nomination of lands appropriate for competitive bidding. 43 CFR 3120.3-1; 53 FR 22814, 22829, 22844 (June 17, 1988).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of the Eastern States Office is affirmed as modified.

James L. Burski
Administrative Judge

I concur:

Franklin D. Arness
Administrative Judge